To create a more representative and accountable Congress by prohibiting partisan gerrymandering and ensuring that any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.

IN THE SENATE OF THE UNITED STATES

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To create a more representative and accountable Congress by prohibiting partisan gerrymandering and ensuring that any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Maps Act of 2018”.

SEC. 2. FINDINGS.

Congress finds the following:
(1) Democracy in the United States is rooted in the notion of actual representation and a rejection of the earlier British concept of virtual representation. In 1776, in Thoughts on Government, John Adams wrote that a legislative assembly “should be in miniature, an exact portrait of the people at large.” Thomas Paine argued in Common Sense that a legislature should act “in the same manner as the whole body [of the people] would [act] were they present.” At the Constitutional Convention, both Federalists and Anti-Federalists agreed. Federalist James Wilson declared, for example, that the new House of Representatives “ought to be the most exact transcript of the whole Society,” while his counterpart George Mason argued that the “requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel.”

(2) The Supreme Court made clear in Reynolds v. Sims, 377 U.S. 533 (1964), that the objective of redistricting is to achieve “fair and effective representation for all,” that legislatures “should be bodies which are collectively responsive to the popular will,” and that the Constitution “guarantees the opportunity for equal participation by all voters.”
(3) Partisan gerrymandering is incompatible with democratic principles at the foundation of the Republic. The drawing of electoral districts to benefit or disadvantage certain political parties denies people fair, effective, and accountable representation by allowing representatives to choose their voters rather than voters to choose their representatives.

(4) In Davis v. Bandemer, 478 U.S. 109 (1986), the Supreme Court explained that it has “repeatedly stated that districting that would ‘operate to minimize or cancel out the voting strength of racial or political elements of the voting population’ would raise a constitutional question”.

(5) The Constitution of the United States empowers Congress to ensure that congressional districting promotes fair, effective, and accountable representation for all people, as demonstrated in—

(A) article I, section 2, clause 1, of the Constitution of the United States;

(B) article I, section 4, clause 1, of the Constitution of the United States;

(C) article I, section 5, clause 1, of the Constitution of the United States;
(D) section 5 of the Fourteenth Amendment to the Constitution of the United States; and

(E) section 2 of the Fifteenth Amendment to the Constitution of the United States.

(6) In Vieth v. Jubelirer, 541 U.S. 267 (2004), the Supreme Court recognized that “the Framers provided a remedy” for partisan gerrymandering “in the Constitution” through the “power bestowed on Congress to regulate elections, and . . . to restrain the practice of political gerrymandering.”

(7) This power “has not lain dormant,” as Congress has repeatedly exercised its authority under article I, section 4 to regulate congressional districting criteria when Congress passed the Apportionment Act of 1842 (5 Stat. 491), the Apportionment Act of 1862 (12 Stat. 572), the Apportionment Act of 1872 (17 Stat. 28), the Apportionment Act of 1901 (31 Stat. 733), the Apportionment Act of 1911 (37 Stat. 13), the Apportionment Act of 1941 (55 Stat. 761), and the 1967 amendment to the Apportionment Act of 1929 (Public Law 90-196).

SEC. 3. DISTRICTING CRITERIA.

(a) REQUIRED CRITERIA.—Following each Federal decennial census of population, each State with more than
one congressional district shall establish or alter the
boundaries of each congressional district of the State in
accordance with each of the following criteria:

(1) Compliance with the Constitution of the
United States, including the requirement of equal
population.

(2) Compliance with the Voting Rights Act of
1965 (52 U.S.C. 10301 et seq.).

(b) PROHIBITED CRITERIA.—Except to the extent
necessary to comply with subsection (a) and section 4, in
establishing or altering the boundaries of any congres-
sional district of a State, the State may not consider the
following criteria:

(1) The political party registration or affiliation
of the residents of the State.

(2) The voting history of the residents of the
State.

(3) The election results of the precincts of the
State.

(4) The place of residence of any incumbent,
political candidate, or potential political candidate.

(c) PERMISSIBLE CRITERIA.—A State may consider
other criteria, in addition to the required criteria under
subsection (a), in establishing or altering the boundaries
of its congressional districts, to the extent such other cri-
teria do not conflict with the requirements of this section or violate section 4. The permissible criteria under this subsection may include any of the following:

(1) Geographic contiguity and compactness.

(2) Respect for communities of interest. Such communities of interest—

(A) may be based on factors including shared cultural or historical characteristics or economic interests; and

(B) may not be based on associations with any political party, incumbent, or political candidate, or potential political candidate.

(3) Respect for counties, cities, and other political subdivisions.

SEC. 4. PROHIBITION ON PARTISAN GERRYMANDERING.

(a) Prohibition.—Except as necessary to comply with section 3(a), a State shall not establish a congressional districting plan that has the purpose or will have the effect of unduly favoring or disfavoring any political party.

(b) Enforcement.—

(1) In general.—Any eligible voter of a State may bring a civil action before a 3-judge court convened in accordance with section 2284 of title 28, United States Code, for a violation of subsection (a).
(2) COURT ORDER.—A court in a civil action under this subsection—

(A) may issue an order invalidating the congressional districting plan of such State on the grounds that the plan violates subsection (a);

(B) shall consider any violation of section 3 to be probative evidence that the districting plan has the purpose of unduly favoring or disfavoring a political party; and

(C) may consider, among other things, statistical evidence of the extent and durability of partisan bias, electoral responsiveness, and the ability of each party to translate votes into seat share.

(e) REMEDIES.—In remedying a violation of subsection (a), a court shall apply the following:

(1) If the court finds that the State has established a congressional districting plan with the purpose of unduly favoring or disfavoring a political party, the court shall appoint a special master or panel of special masters to propose a remedy to the court for the violation.

(2) If the court finds that the State has established a congressional districting plan that will have
the effect, but does not have the purpose, of unduly favoring or disfavoring a political party, the court may, in its discretion, appoint a special master or panel of special masters to propose a remedy to the court for the violation.

(d) LEGISLATIVE PRIVILEGE.—No person, legislature, or State may claim legislative privilege under either State or Federal law in a civil action brought under this section or in any other legal challenge, under either State or Federal law, to a congressional districting plan.

SEC. 5. SAFE HARBOR.

With respect to any claim under section 4, a State’s enacted congressional districting plan shall have a rebuttable presumption of validity if that plan was created by a nonpartisan or bipartisan redistricting commission, where support from members of more than one political party and, if applicable, nonaffiliated members, is required to approve a congressional districting plan.

SEC. 6. OTHER LAWS.

(a) No Preemption.—Nothing in this Act shall be construed to preempt any cause of action under State law, or limit or abrogate any cause of action under Federal law.

(b) Other Districting Criteria.—Nothing in this Act shall be construed to prevent a State from adopting
congressional districting criteria or procedures that do not conflict with this Act and that serve to limit potential exposure to liability under section 4(a).

(c) VOTING RIGHTS ACT.—Nothing in this Act shall be construed to preempt or alter any provision of the Voting Rights Act of 1965 (52 U.S.C. 10301 et seq.).

SEC. 7. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.